

Line 3, after “or” insert --in a –

Line 9, line 3, change “The” to –the--; change “Cocylinder” to --CO2 cylinder—

Line 4, change “sch” to –such—

Line 7, change “surround” to –surrounds—

Line 13, change “dispertion” to –dispersion—

Line 14, change ”ose” to –hose—

The foregoing changes were made to correct grammatical and spelling mistakes which the spell checker did not pick up for some reason. There is no substantive changes in the list as is obvious.

IN THE CLAIMS

Claims 1-20 are presently in the application and all have been rejected as indefinite under 35 USC 112. In this regard the claims have been amended to rid them of any ambiguity in regard to various phrases and the use of the term “inert” which has been cancelled from the claims.

Claims 1-4, 6, 10, 12-15 and 17-18 have been rejected under 35 USC 102 as anticipated by Grant. The Grant reference fails as a teaching reference in that it is a projectile as evidenced by the recitation in col 5, lines 5 through 9 therein which denotes it clearly as a “shell to be fired by a gas gun”. The shell, upon impact, drives a spike though the forward end thereof and, in the process, uses spears such as 56 or 156 to

puncture the seal on the top, 132, e.g., of a cap which travels along with the spike 136 thus allowing gas, under pressure in the shell casing, to flow out the spike holes such as 138 to enter a room. This is totally different than the instant invention. In addition, the gas is totally different and would not be as incapacitating as the gas used in the instant invention. In addition, an explosive primer and charge are used to fire the projectile unlike the present invention where the projection is thrust through the wall or door. In addition, claim 1-4 , 10 and 13 have been extensively amended so as to further define the invention over the prior art. Claim 1 calls for the gas being CO₂ and it has the additional step of calculating the amount of gas needed to overcome the opponents. None of the references show this step. Claim 2 calls for the lance to be on the end of a battering ram with a sliding weight. Claim 10 calls for a non-explosive means to create an opening in a wall or door to distinguish it from the prior art. All of these amendments help weaken the Examiner's arguments as to anticipation or obviousness.

Claims 8-9 and 16 are rejected under 35 USC 103 as being obvious over Grant in view of Brunn et al which is cited to show the use of CO₂ as a disabling gas. However, to substitute the gas would destroy the teachings of Grant who goes to great length (see col 1, lines 16-33, lines 64-68; col 2, lines 6-8) to avoid any injury to the targets or hostages. To use CO₂ runs the much greater risk of actually killing the targets which Grant would not countenance with his concerns about safety. However, the Examiner has misapplied Brunn as it does not teach the use of CO₂ as a disabling agent but uses tear gas (see col 3, lines 38-40) and line 1 of Claim 1. The CO₂ is merely a mechanism to disperse the tear gas to avoid using a percussion type grenade where there

is a danger of a fire starting and spreading. Claim 8 has been amended to define an odorant in the CO2 mix. This clearly distinguishes the claim from the prior art as well as the changes already addressed to claim 1 and claim 10 on which these claims depend.

Claims 10, 12-15 and 17-18 are rejected under 35 USC 102(b) over Graham. Again, like with Grant, Graham discloses a projectile designed to be fired from, in this case, a missile and is totally unlike the instant invention. It is designed to be affixed to the end of an anti-tank missile. While the inventor mentions a “knockout” gas he does not state what type of gas he is referring to. Claim 10 has been amended as stated and claims 12-15 and 17-18 depend on changed claim 10 and claim 13 has been amended as well.

Claims 1-7 are also rejected over Graham in view of Grant under 35 USC 103. This rejection fails for the same reasons as mentioned immediately above in that Graham is a missile affixed projectile and not a manually handled device. To modify a totally different system with Graham is not a sound legal rejection as there simply is no teaching in Graham. Again, claims 1-5 have been extensively amended to define over the prior art.

Claim 16 is rejected over Graham in view of Brunn under 35 USC 103. Again, because of the reasons that Graham is a totally different system and Brunn only uses the CO2 as a dispersion agent, not as a gas to disable targets. Both claim 16 and claim 10 on which it depends have been amended to distinguish the invention.

Claims 8 and 9 are rejected over Graham in view of Grant and further in view of Brunn under 35 USC 103. Again, since the primary reference is inapplicable as a teaching reference there would be no reason to modify it in view of the two other secondary references. Claim 1 and Claim 8 which depends on claim 1 have been amended and claim 9 depends on claim 8.

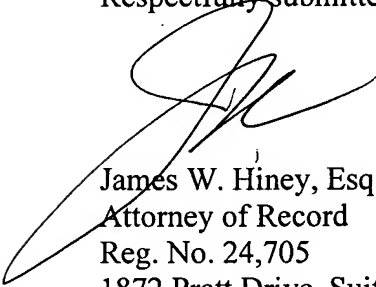
Claims 10-15 and 17-19 are rejected under 35 USC 102 in view of McDanold. The reference is not applicable as it is used to neutralize combustible gases by combining them with another gas. To call the lance of 41, 51 of the reference a “battering ram” is a stretch beyond normal language usage. The gas contemplated is liquid nitrogen to cool off the interior of the compartment being entered. Again, an explosive charge is used so it is doubtful whether the device would actually work. Claim 10 and 13 have been amended to distinguish the invention of McDanold.

Claims 1,2,5-7, 10,11 17 and 20 are rejected over Suchar under 35 USC 102. The rejection fails in its applicability to Claim 1 and its dependant claims as there is no stip of “creating an opening apart from normal openings” or in claim 10 as “means to create an opening in said space” No such mechanism is shown or described in Suchar. Nor does the reference refer to CO₂, only nitrous oxide and oxygen. Claims 1, 2 5, and 10 have been amended to distinguish over Suchar.

Claim 20 has been cancelled.

As all of the formalities have been addressed and corrected and the claims extensively amended to define over the cited prior art, an quick passage to issue is earnestly solicited. If the Examiner is of the belief that there are still some matters to clear up he is invited to call the undersigned so that they may be taken care of by Examiners amendment.

Respectfully submitted,



James W. Hiney, Esq.
Attorney of Record
Reg. No. 24,705
1872 Pratt Drive, Suite 1100
Blacksburg, VA 24060
(540) 552-4400

Certification of Mailing.

I, James W. Hiney, do hereby certify and aver that an executed copy of this response with 4 sheets of amended claims were deposited, Express Mail No. ED 647434350 US, with the U.S. Postal Service, this 27th day of May, 2005.



James W. Hiney